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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/807,410	04/19/2001	Gisela Schon		5923

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EXAMINER

VU, STEPHEN A

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 10/23/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/807,410

Applicant(s)

Schon

Examiner

Stephen Vu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Aug 1, 2002
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 12-33 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on Apr 19, 2001 is/are a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some\* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other:

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## DETAILED ACTION

### *Election/Restriction*

1. The examiner has decided to withdraw the restriction requirement and examine claims 12-33.

### *Drawings*

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: 2". A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the electronic control devices, sensor switch , control system, and spring type lock must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

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### *Specification*

4. A substitute specification in proper idiomatic English and in compliance with 37 CFR 1.52(a) and (b) is required. The substitute specification filed must be accompanied by a statement that it contains no new matter.
5. The disclosure is objected to because of the following informalities: on page 24, line 20, element 52 is stated to be "upper supporting surface" and on page 25, line 1, element 53 is mentioned to be "lower supporting surface". However, on page 25, line 4, element 53 is disclosed to be "upper supporting surface" and element 52 is stated to be "lower supporting surface". In addition, it is unclear what "resp." means, as it appears throughout the specification, for example, on page 17, line 7. On page 1a, line 13, the reference to claim 1 should be removed.
6. The following guidelines illustrate the preferred layout and content for patent applications. These guidelines are suggested for the applicant's use.

### *Arrangement of the Specification*

The following order or arrangement is preferred in framing the specification and, except for the reference to the drawings, each of the lettered items should appear in upper case, without underling or bold type, as section headings. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

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- (a) Title of the Invention.
- (b) Cross-Reference to Related Applications.
- © Statement Regarding Federally Sponsored Research or Development.
- (d) Reference to a "Sequence Listing," a table, or a computer program listing appendix submitted on compact disc (see 37 CFR 1.52(e)(5)).
- (e) Background of the Invention.
  - 1. Field of the Invention.
  - 2. Description of the Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) Brief Summary of the Invention.
- (g) Brief Description of the Several Views of the Drawing(s).
- (h) Detailed Description of the Invention.
- (I) Claim or Claims (commencing on a separate sheet).
- (j) Abstract of the Disclosure (commencing on a separate sheet).
- (k) Drawings.
- (l) Sequence Listing, if on paper (see 37 CFR 1.821-1.825).

Please be advised that the Specification lacks the proper headings for their respective paragraphs, i.e. Title of the Invention, Cross-Reference to Related Applications, Brief Summary of the Invention, Brief Description of the Several Views of the Drawing(s), etc.

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Appropriate correction is required.

***Claim Objections***

7. Claims 12-15 are objected to because of the following informalities: the terminology of the structure being called “oscillating 3-dimensional movement drive system” in the claims should be made consistent in the Specification and claims. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

8. Claim rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

9. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

10. Claims 13-14,16-17,29, and 32-33 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The applicant has failed to disclose in the Specification how the oscillating 3-dimensional movement device system is adjustable relative to

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the frequency, amplitude, and direction of movement. There's no discussion to provide antecedent support of the electronic control devices and its ability to adjust the oscillating 3-dimensional movement device system. The applicant does not discuss a sensor switch to sense upper body posture of a person and a control system to switch between different motion patterns. The applicant does not disclose how the leg and foot support can be locked in a plurality of positions.

11. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

12. Claim 11 recites the limitation "the side of the seating device" in lines 2-3. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

14. Claims 12-15 and 17-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Deeley, Jr.

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Deeley, Jr. shows a seating device comprising a base (46), an upper-body support supported by the base, an oscillating 3-dimensional movement drive system (see Figure 3), a seat (58) attached to the oscillating 3-dimensional movement drive system, in order for the seat to move along three axes. The oscillating 3-dimensional movement drive system is adjusted by switch assembly (72). The seat has a loin support. The upper-body support has at least one supporting device which can be a backrest, a lateral support, a stomach support, a headrest, a neck rest, or a shoulder rest. Armrests (64) are provided and be can be moved in a horizontal direction.

***Claim Rejections - 35 USC § 103***

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459

(1966), that are applied for establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.



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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

17. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Deeley, Jr. in view of Mitschelen et al.

Deeley, Jr. discloses the claimed invention except for the sensor. Mitschelen et al teach an arrangement for adjusting the sitting position of a vehicle occupant with a sensor (26). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a sensor of Mitschelen et al's for the seating device of Deeley, Jr. in order to automatically adjust the sitting position of the user.

18. Claims 31-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deeley, Jr. in view of Eley.

Deeley, Jr. discloses the claimed invention except for the leg/foot support (60) to be movable relative to the base. Eley teaches a chair comprising a movable leg/foot support (15). It would have been obvious to one of ordinary skill in the art to construct the leg/foot support (60) of Deeley, Jr's seating device to be movable relative to the base as taught by Eley, in order to allow the leg/foot support to be adjusted by the user for the user's satisfaction.

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***Conclusion***

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Larkin et al, Brodersen, Ropp, Holobaugh, Jr., Glockl, Patel, and Mizelle et al are cited as showing similar types of seating device.


20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen A Vu whose telephone number is 703-308-1378. The examiner can normally be reached on M-F, 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M Cuomo can be reached on 703-308-0827. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.



Stephen Vu  
Patent Examiner  
October 18, 2002



Peter M. Cuomo  
Supervisory Patent Examiner  
Technology Center 3600